

Hearing Date and Time: September 27, 2007 at 10 a.m. Eastern Time
Response Date and Time: September 20, 2007 at 4 p.m. Eastern Time

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	:	Chapter 11
	:	
DELPHI CORPORATION, <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	
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**RESPONSE OF FEDERAL-MOGUL CORPORATION TO DEBTORS' TWENTIETH
OMNIBUS OBJECTION TO CLAIMS (CLAIM NO. 1111)**

Federal-Mogul Corporation (“Federal-Mogul”), by and through its undersigned counsel, hereby responds to the Debtors’ Twentieth Omnibus Objection Pursuant To 11 U.S.C. Section 502(b) And Fed. R. Bankr. P. 3007 To Certain (A) Duplicate And Amended Claims, (B) Insufficiently Documented Claims, (C) Claims Not Reflected On Debtors’ Books And Records, (D) Untimely Claim, And (E) Claims Subject To Modification, Tax Claims Subject To Modification, Modified Claims Asserting Reclamation, Consensually Modified And Reduced

Tort Claims, And Lift Stay Procedures Claims Subject To Modification [D.I. 9151] (the “Objection”) filed by Delphi Corporation and the above captioned debtors and debtors-in-possession (collectively, the “Debtors”), which seeks to disallow and expunge Federal-Mogul’s Claim No. 1111 on the grounds that it is allegedly inconsistent with the Debtors’ books and records. In response to the Objection, Federal-Mogul respectfully states as follows:

1. On or about December 12, 2005, Federal-Mogul timely filed a proof of claim against Delphi Automotive Systems LLC (“Delphi Automotive”), a Debtor in the above-referenced jointly administered bankruptcy cases, asserting a secured claim in the amount of \$1,952,349.57 (designated Claim No. 1111 in the Debtors’ claim registry and hereinafter referred to as the “Claim”). The Claim was filed on account of certain pre-petition amounts due and owing by Delphi Automotive to Federal-Mogul and secured by way of setoff in the amount of \$2,252,554.05. Accordingly, Federal-Mogul has satisfied the requirements of Rule 3001 of the Federal Rules of Bankruptcy Procedure, and therefore the Claim constitutes *prima facie* evidence of the validity and amount of the claim. In re WorldCom, Inc., 2005 WL 3832065, at *4 (Bankr. S.D.N.Y. Dec. 29, 2005) (citing In re Allegheny Int’l Inc., 954 F.2d 167, 174 (3rd Cir. 1992)).

2. The burden of proof has now shifted to the Debtors to produce sufficient evidence to negate the *prima facie* validity of the Claim. See In re Reilly, 245 B.R. 768, 773 (2d. Cir. BAP 2000). The Debtors must therefore present contradictory evidence of at least equivalent value to the evidence supporting the proof of claim before the burden of demonstrating validity of the claim shifts back to Federal-Mogul. See In re Holm, 931 F.2d 620, 623 (9th Cir. 1991); see also In re Allegheny Int’l, Inc., 954 at 173; In re Nat’l Steel Corp., 321 B.R. 901, 905 (Bankr. N.D. Ill. 2005) (In practice, the objector must produce evidence, which, if believed, would “refute at least one of the allegations that is essential to the claim’s legal sufficiency.”) (quoting Allegheny Int’l, Inc., 954 F.2d at 173).

3. Here, other than to merely assert that the Claim is “not owing pursuant to the Debtors’ books and records,” the Objection is devoid of any factual or legal basis that the

claim is invalid or that the supporting documentation provided by Federal-Mogul was lacking in any respect. The Objection is not supported by an affidavit of a person with personal knowledge of the Debtors' books and records, or any detailed explanation as to the basis for asserting that the Debtors are not liable to Federal-Mogul. See Objection at 16, ¶ 29. Thus, the Objection has failed to shift the burden back to Federal-Mogul to prove the validity of the Claim.

4. Moreover, for the purposes of the Objection, it appears that the Claim was inappropriately identified by the Debtors as a claim asserted against Delphi Corporation (Case No. 05-44481) and not Delphi Automotive (Case No. 05-44640). See Objection, Exh. C-1 at 2.¹ This error may explain why the Debtor's books and records do not show any liability owed – because the Debtors have reviewed the wrong books and records with respect to the Claim.

5. As of the date of this Response, Federal-Mogul and the Debtors are at or near the completion of several months of negotiations to settle and resolve, among other things, the Claim and certain other claims that may be due and owing between Federal-Mogul and the Debtors. Notwithstanding these ongoing negotiations, Federal-Mogul reserves all of its rights with respect to the Claim and any other claims it has asserted against the Debtors.

6. In light of the foregoing, Federal-Mogul respectfully requests that the Court adjourn the hearing on the Debtors' Objection that relates to the Claim in order to permit the parties sufficient time to complete their discussions. In the alternative, the Court should deny the Objection and allow the Claim in the amount of \$1,952,349.57 as a result of the Debtor's failure to seriously contest the amount due and owing.

¹ The proof of claim filed by Federal-Mogul (designated Claim No. 1111) names "Delphi Automotive Systems" as the debtor entity against which the claim was filed, but also identifies the applicable case number as 05-44481, which is the leading case number for the jointly administered Debtors. For the avoidance of doubt, the Claim is at all times relevant herein, a claim asserted against Delphi Automotive Systems LLC.

7. A reply by the Debtors to this Response, if any, should be delivered to the following attorney for Federal-Mogul:

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8. Notwithstanding anything contained herein, Federal-Mogul expressly reserves the right to (i) file any substantive response to the claims and assertions raised in the Objection to the Claim ; (ii) amend, modify or supplement the Claim; and (iii) file any pleading to assert its setoff rights vis-à-vis the Debtors.

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WHEREFORE, Federal-Mogul respectfully requests that the Objection be adjourned so that the parties may continue to negotiate a settlement to the claims asserted in the Claim or, in the alternative, that the Court (i) allow the Claim in the secured amount of \$1,952,349.57 against Delphi Automotive Systems LLC and (ii) grant Federal-Mogul such other and further relief as may be just and proper.

Dated: September 20, 2007
New York, New York

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